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a judgment for plaintiff on a demurrer of evidence, defendant brings error. Affirmed.

J. M. Perry and Randolph Harrison, for plaintiff in error.
Lee & Kemp, for defendant in error.

MOSS *v.* TAZEWELL COUNTY.

Nov. 29, 1911.

[72 S. E. 945.]

1. Constitutional Law (§ 50*)—Legislative Power.—The power of the Legislature is supreme, except as restricted by the state or federal Constitution.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 48, 49; Dec. Dig. § 50.* 3 Va.-W. Va. Enc. Dig. 161.]

2. Constitutional Law (§ 48*)—Construction—Constitutionality.—All doubts as to the constitutionality of a statute should be resolved in favor of its existence, and the court should not declare a statute unconstitutional, unless it clearly and plainly appears to be so.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 46; Dec. Dig. § 48.* 3 Va.-W. Va. Enc. Dig. 152, 163.]

3. Taxation (§ 40*)—Statutes (§ 95*)—Uniformity—General Law.—Acts 1908, c. 70 (Code Supp. 1910, p. 729), entitled "An act to provide for the issuing of county bonds for permanent road or bridge improvements in the magisterial districts of the counties of the state," does not violate Const. 1902, § 168 (Code 1904, p. cclxii), providing that all taxes, whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied under general laws.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 68-69; Dec. Dig. § 40;* Statutes, Cent. Dig. §§ 105, 106; Dec. Dig. § 95.* 13 Va.-W. Va. Enc. Dig. 85, 87. 14 Va.-W. Va. Enc. Dig. 995.]

4. Counties (§ 187*)—Fiscal Management—Bonds—Liability. **On.**—Acts 1908, c. 70, § 1 (Code Supp. 1910, p. 729), permits bonds to be issued by any county for road and bridge improvements in magisterial districts. Section 2 requires the polls to be opened at all the voting places in the county not in a particular magisterial district, and provides that all qualified voters of the counties shall vote upon the question. Section 3 requires the county election commissioners to canvass the returns. Section 4 provides that, if a majority of the voters of the county and also a majority of the voters of the district voting upon the question favor issuing the bonds, the county board of supervisors shall be directed to carry out their wishes. Section 6 requires the board to issue the bonds and have written therein a re-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

cital that they are issued for "—— magisterial district," but that the full credit of the county is pledged for their payment, and that a tax will be levied upon the property of the district to pay interest and create a sinking fund. Section 7 requires a levy by the county on all property liable to state tax in the magisterial district in which the proceeds of the bonds are to be expended, and that, should the county have to assume any payment, the board of supervisors shall levy such tax in the magisterial district as may be necessary to pay the amount so assumed; "it being * * * intended that bonds issued or to be issued under this act are county obligations, but payable primarily out of levies upon the property in the magisterial district, where the proceeds of the bonds may be expended hereunder." Held, that the bonds were direct county bonds, and not bonds of the magisterial district; the county's liability to the bondholder not being diminished because of the provision for levy upon the property of the district.

[Ed. Note.—For other cases, see Counties, Cent. Dig. §§ 293-295; Dec. Dig. § 187.* 10 Va.-W. Va. Enc. Dig. 285. 12 Va.-W. Va. Enc. Dig. 880.]

Error to Circuit Court, Tazewell County.

Action by the County of Tazewell against C. J. Moss. Judgment for plaintiff, and defendant brings error. Affirmed.

STONEGA COKE & COAL CO. *v.* ADDINGTON.

Nov. 16, 1911. Rehearing denied Jan. 18, 1912.

[73 S. E. 257.]

1. Damages (§ 62*)—Contracts—Measure of Damages.—Where an owner of coal mines, who employed a contractor to drive entries into the mines, to do all the temporary timbering, and to remove the slate and refuse in the entries, etc., failed to furnish, as required by the contract, pumps, pipes, and wrenches, which could be purchased for a very small sum, the contractor was required to purchase the same, and where he failed to do so he could not recover the value of any labor done by reason of the owner's failure to furnish the articles, since the rule that a party cannot recover for avoidable consequences is applicable to contracts, as well as torts.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 124-131; Dec. Dig. § 62.* 4 Va.-W. Va. Enc. Dig. 183, 212.]

2. Mines and Minerals (§ 109*)—Contracts—Breach—Waiver.—An owner of a coal mine, employing a contractor to drive entries into the mine, failed to furnish the contractor pumps, pipes, and wrenches for pumping the water out of the mine, as required by the contract.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.